653.

SUPREME COURT OF THE UNITED STATES.

No. 31.

THE COLUMBIAN INSURANCE COMPANY OF ALEXANDRIA, PLAINTIFFS IN ERROR,

VERSUS

ASHBY & STRIBLING, ET AL.

ERROR TO THE CIRCUIT COURT UNITED STATES FOR ALEXANDRIA, D. C.

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654.

DISTRICT OF COLUMBIA, to wit:

Pleas before the honorable the judges of the United States circuit court of the District of Columbia for the county of Alexandria, at the court-house in the town of Alexandria, the 9th day of May, 1838.

Title.

TURNER ASHBY and MAGNUS T. STRIBLING, trading under the firm of ASHBY and STRIBLING, and PETER HEWITT, plaintiffs.
against
THE COLUMBIAN INSURANCE COMPANY OF ALEXANDRIA, defendants.

Be it remembered, that heretofore, to wit: at the rules held in the clerk's office of the said court for the month of November, in the year 1826, came the plaintiffs aforesaid by Thomson F. Mason, Esq. their attorney, and filed *their* a certain bill against the said defendants, which is in the words following:

Declaration.

ALEXANDRIA, COUNTY, to wit:

Turner Ashby, Magnus T. Stribling and Peter Hewitt, trading under the firm of Ashby and Stribling, complain of the Columbian Insurance Company of Alexandria, and of John A. Stewart in custody, &c. of a plea that they render unto them the sum of four thousand dollars, which they owe, and from them unjustly detain; for that whereas the said defendants, heretofore, to wit: on the twenty-ninth day of June, 1825, at the county aforesaid, by their certain writing obligatory of that date, sealed with their seals, and now here to the court to be produced, acknowledged themselves to be held and firmly bound unto the said plaintiffs in the said sum of four thousand dollars above demanded to be paid to the said plaintiffs whenever afterwards required; which obligation was, and is subject to a certain condition there under written, whereby after reciting to the following effects, to wit: that whereas the said Columbian Insurance Company had made insurance on the cargo of the brig Hope on a voyage from Alexandria to Barbadoes, to the extent of four thousand nine hundred and twenty dollars, and whereas the said brig had since been cast on shore below Craney Island, and a claim had been made by the owners of the said brig on the cargo for contribution to an average loss, to which it is said the owners of the said brig were entitled; then the condition of the said obligation

was such, that if the owners of the said brig should by the judicial decisions of competent tribunals, show themselves entitled to such average loss, then if the said Columbian Insurance Company should thereupon, when required, pay to the owners of the said brig, or to their order, such proportion of the said average loss as should be properly chargeable on the amount of cargo by them insured, then said obligation to be void; and the said plaintiffs say, that afterwards, to wit: on the day of they did, as owners of the said brig, by the judicial decision of and competent tribunals, show themselves entitled to such average loss; and that the said Columbian Insurance Company did not thereupon, and when required, pay to the said owners, nor to their order, such proportion of such average loss, as was properly chargeable on the amount of cargo by them insured; and thereby an action hath accrued to them, the said plaintiffs, to demand and have, of and from the said defendants, the said sum of four thousand nine hundred and twenty dollars above demanded, yet the said defendants, though often requested so to do, have not as yet paid the said sum of four thousand nine hundred and twenty dollars above demanded, or any part thereof to the said plaintiffs, but to pay the same have hitherto, and still do wholly refuse, to the damage of the said plaintiffs of one hundred dollars, and therefore they bring suit.

THOMSON F. MASON, *P. Q.*

Common Order.

And the defendant being arrested and not appearing, on the motion of the plaintiffs, by their attorney, it is ordered, that judgment be entered for the plaintiffs against the defendants, for what damages the plaintiffs have sustained by occasion of the said defendants' non-performance of the promise, and assumption in the declaration mentioned, unless the said defendants shall appear and plead to issue at the next rules.

Common Order confessed and Writ of Inquiry answered.

At another day, to wit, at the rules held in the clerk's office of the said court, for the month of January, 1827, came the plaintiffs aforesaid, by their attorney, and the defendants still failing to appear, on the motion of the plaintiffs, by their attorney, it is ordered, that the last order made against the defendants in this cause be confirmed, and that the plaintiffs damages be ascertained by a jury, at the next term.

Writ of Inquiry set aside and Non ast 2d.

At an another day, to wit, at a court continued and held for the District and county aforesaid, the 15th day of November, 1827, came the parties aforesaid, by their attorneys; and on the defendants motion, the writ of inquiry awarded in the office is set aside, and the

defendants say, that they did not assume upon themselves, in manner and form as the plaintiffs against them have complained; and of this they put themselves upon the country, and the plaintiffs likewise, and the case is continued.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 10th day of November, 1828, (until which time this cause had been regularly continued,) came the parties aforesaid, by their attorneys, and by consent, the name of Mordecai Miller is struck out, and the Columbian Insurance Company of Alexandria are made defendants in this case, and continued.

Jury sworn.

At another day, to wit, at a court continued and held for the District and county aforesaid, the third day of November, 1830, came the parties aforesaid, by their attorneys, and thereupon, came a jury, to wit:

Thomas E. Baird, Robert L. White, James Campbell, Henry B. Rose, Charles McKnight, James McKenzie, Lawrence Hooff, junior, Robert S. Blacklock, Bazil B. Hopkins, Alexander McKenzie, John M. Brown, and Thomas G. Prettyman, who being sworn and affirmed, well and truly to try the issue joined between the plaintiffs and defendants, retired and considered of their verdict.

Special Verdict.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 4th day of November, 1830, came the parties aforesaid, by their attorneys, and the jury sworn to try the issue in this case, appeared in court, and returned the following verdict, to wit:

"We, of the jury find, that on the 27th day of May, 1825, the brig Hope sailed from Alexandria on a voyage to Barbadoes, that on the said vessel standing down the Chesapeake Bay, the weather became thick and foggy, and that it appearing in the then state of the weather imprudent to proceed to sea, the captain kept away for Sewall's Point, for the purpose of making a harbor, where he anchored, with the best bower anchor in three fathoms water; that all sails were furled, and a good scope of cable payed out, the wind then blowing very fresh from the northeast, that at 10 o'clock P. M., on the third day of June, he let the small bower anchor under foot, and payed out the best bower anchor until both cables bore a strain; that the gale still increasing, the kedge anchor was let go: that about midnight, the vessel struck adrift, that then the whole scope of the cables were payed out till they all bore a strain, when she fetched up; that the gale continued on the following days to increase, and the sea being very heavy, at one o'clock she struck adrift again and dragged three miles, when she brought up; that the gale then increased to almost a hurricane, she ripped up the windless, parted the chain cable, and com-

menced drifting again, the whole scope of both cables being payed out. That she then between 11 and 12 o'clock brought up about ¾ of a mile below Craney Island in 2½ fathom water amongst, and in sight of a number of other vessels, that she then thumped or struck on the shoals on a bank, and her head swinging around to the westward, brought her broadside to the wind and heavy sea; that the captain, in this situation, finding no possible means of saving the vessel or cargo, and preserving the crew, slipped his cables, and run her on shore for the safety of the crew and preservation of the vessel and cargo, that the vessel run far upon the bank, where, after the storm, she was left high and dry, and it was found impracticable to get her off.

"We find that the plaintiffs in this action were the owners of the said brig; the value of the said brig was $3000; that one third part of the brig had been insured by the said Columbian Insurance Company; that no insurance had been effected for the remaining two thirds.* We further find, that the whole of the cargo on board said brig was of the value of $5335, of which the said Columbian Insurance Company insured $4920. We further find, that the cargo was afterwards taken out safely, and that the vessel, her tackle, &c., were sold for the sum of $256 40. If, on the matter aforesaid, the law be for the plaintiffs, then we find for the plaintiffs, and assess their damages to the sum of fifteen hundred dollars; and if the law be for the defendants, then we find for the defendants."

And the cause is continued till the next term, for the matters of law arising on the said special verdict to be argued.

Referred to Commissioner Auld.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 30th day of October, 1837, came the parties aforesaid, by their attorneys, and this cause is referred to Master Commissioner Auld, to state an average account.

Judgment.

And now here at this day, to wit, at a court continued and held for the District and county aforesaid, the 9th day of May, 1838, came the parties, by their attorneys, and the auditor filed his report; (see page 17) and thereupon, the matters of law arising upon the special verdict in this cause being argued, it seems to the court here, that the law is for the plaintiffs:

Therefore, it is considered by the court, that the plaintiffs recover against the defendants, twelve hundred and forty-nine dollars and one cent, with interest from the 20th day of August, 1825, till paid, and

* We find that the plaintiffs, Ashby and Stribling, instituted suit against the defendants on the policy by which the said insurance was effected; the record of proceedings in which suit are in the words and figures following, (see page 21.) We find that the defendants have fully satisfied and paid the judgment in said suit rendered against them.

their costs by them about their suit in this behalf expended. And the said defendants in mercy, &c.

Plaintiffs costs - - - - $16

Bond.

Know all men by these presents, that we, the Columbian Insurance Company of Alexandria, and John A. Stewart, are held and firmly bound unto James Ashby and Magnus T. Stribling, trading under the firm of Ashby and Stribling, and Peter Hewitt, owners of the brig called the Hope of Alexandria, in the sum of four thousand dollars, to be paid to them, or their assigns, to which payments well and truly to be made, when required, the said Company bind themselves, and the said John A. Stewart binds himself, his heirs, executors, and administrators, jointly and severally, firmly by these presents.

In witness whereof, the said Company have hereto caused their corporate seal to be affixed, and the said John A. [L. S.] Stewart has hereto set his hand and seal, this twenty-ninth day of June, 1825.

Whereas the said Columbian Insurance Company have made insurance on the cargo of the brig Hope, on a voyage from Alexandria to Barbadoes, to the extent of four thousand nine hundred and twenty dollars; and whereas the said brig has been cast on shore below Craney Island, and a claim has been made by the owners of the said brig on the cargo for contribution to an average loss to which it is said the owners of the said brig are entitled.

Now, the condition of the above obligation is such, that if the owners of the said brig, shall by judicial decisions of competent tribunals show themselves to be entitled to such average loss, then if the said Columbian Insurance Company shall thereupon, when required, pay to the owners of the said brig, or to their order, such proportion of the said average loss, as shall be properly chargeable on the amount of cargo then insured, the above obligation to be void.

MORDECAI MILLER, [SEAL.]
President.
JOHN A. STEWART, [SEAL.]

Witnesses: JAS. SANDERSON.

Deposition of Josiah S. Oldner.

DEPOSITIONS.

STATE OF MARYLAND, *Baltimore County, to wit:*

Whereas, Turner Ashby and Magnus T. Stribling, trading under the firm of Ashby & Stribling, and Peter Hewitt, of Alexandria, have this day, by their agent, given information to me, Thomas Kell, a judge of the county court of Baltimore, that Joshua S. Oldner is a material witness for them, in a suit now depending in the circuit court

of the District of Columbia, and in the county of Alexandria, in which the said Ashby & Stribling and Peter Hewitt are plaintiffs, and Mordecai Miller, of Alexandria, is defendant, and that the said Joshua S. Oldner is about to depart from the port of Baltimore, where he at present resides, to a place beyond sea, (being a mariner;) and the said Turner Ashby and Magnus T. Stribling, trading under the firm of Ashby & Stribling, as aforesaid, and the said Peter Hewitt, by their agent, having made application to me to take the deposition of the said Joshua S. Oldner, *de bene esse*, pursuant to the act of the Congress of the United States, in that case made and provided; these are to give you notice, that I shall proceed to take the deposition of the said Joshua S. Oldner, on the fourth day of October next, being Saturday, between the hours of three and five o'clock in the afternoon of said day, at the office of the Commercial Chronicle, northwest corner of Baltimore and Gay streets, in the city of Baltimore, when and where you may be present to put interrogatories, if you think proper. Given under my hand this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and twenty-eight.

THOMAS KELL.

To Mordecai Miller.

County of Alexandria, to wit:

This day personally appeared before me, Newton Keene, a justice of the peace for the county aforesaid, in the District of Columbia, John S. Mills, and made oath that on this day, to wit: the day last mentioned, he delivered to Mordecai Miller a true copy of the foregoing notice. Given under my hand, this 29th day of September, 1828.

NEWTON KEENE.

In pursuance of the annexed notice, and the accompanying service of the same, I, Thomas Kell, attended at the time and place in the said notice mentioned, and then and there proceeded to take and write down the deposition of Joshua S. Oldner, the witness in the said notice, named upon his corporal oath first taken upon the Holy Gospels of God, which deposition here follows: The said Joshua S. Oldner deposes, that he belonged to the brig Hope, of Alexandria, in the District of Columbia, commanded by James Brown; deponent was in capacity of a seaman, and sailed from that place in said brig, in the latter part of May, eighteen hundred and twenty-five. On the third of June following, the brig anchored under Sewall's point, the weather being very bad, the deponent stated to the captain his apprehensions of danger in going out to sea, the wind being strongly from the eastward, having every appearance of a gale, that it would have been difficult, if not impossible, to weather Hatteras, rendering it, as we apprehended, very difficult or impossible to put back or heave to in safety. After the brig anchored, the deponent went aloft and sent down the fore top gallant yard, and hous'd the top gallant

mast, having out at that time two anchors, with hempen and chain cables and verr'd out cable until they bore an equal strain; sometime during the night, the hour deponent cannot state, the vessel struck adrift, and a third anchor, (the kedge,) was let go, the brig brought up for a little time and started adrift again, and continued to drift until the windlass gave way, and the chain cable parted. The drifting continued, when deponent called the captain and advised him to slip his cables and let the brig wear round and go head on. The gale having increased much, the cables were slipped, and the brig wore round and went ashore, head on, (after day light,) but it was so foggy and thick that they could not see the land, or tell where they were, but supposed themselves about Craney island. After the brig struck the third time, she remained fast, exposed to the sea, which made a fair breach over the stern. When the weather moderated, which was sometime after, and having deliberated what to do, between two and three o'clock, as near as he can recollect, the captain and deponent went on shore and applied to a family there for a passage to Norfolk, which was on the fourth day of June; deponent says that Captain Brown and all on board took every precaution and means to save the vessel and cargo; that he, the deponent, never saw so severe a gale on the coust in his life; that the schooner Ann and five other vessels went ashore at the same time, all near the same place; that the said brig was bound to Barbadoes; that deponent has followed the seafaring life since eighteen hundred and nine, and it is his opinion that if the brig had gone out to sea she and all hands must have been lost.

On the part of the defendants aforesaid by their agent, the following questions were propounded to the deponent, which are hereto annexed:

To the first of which the deponent says that he has answered in the deposition just made by him.

The second. He answers, that the crew of the brig Hope consisted of five men before the mast, the cook, mate and captain, eight in all as he believes; that he cannot repeat any of their names except the captain's, nor the ages; that the short time he was with them, he thought them as good as the general run.

The third. He answers, that from hearing the name mentioned, he thinks that of the mate was Sellick. He don't know whether he was a navigator, but from his conduct going down, deponent thought him capable of his office. There was a man on board acting as pilot, but whether he was a regular pilot deponent don't know, not having seen his branch, but he proceeded very well down the river and bay, but that he does not believe that he was acquainted with Elizabeth river. The pilot was not included in the number of eight of the brig's crew, nor does deponent know his name. He believes the pilot was acquainted with the Potomac river and Chesapeake bay, from his conduct going down.

The fourth. The sails and *riging* of the brig were not indifferent, they were as good as the general run, and were fit for a vessel bound to the West Indies. The best cable, (that is the hempen one,) he

thinks, exceeded fifty fathoms, from his judgment of it; he thinks from sixty to seventy at any rate, and perhaps eighty fathoms. It was not an old one; it was a good cable and fit for use.

The fifth. The deponent can't tell, as he did not stay by the brig until she was striped.

The sixth. The deponent cannot answer, as he was not on board when the provisions, colours and medicine chest were taken out.

The seventh. Deponent went on shore in the boat, the brig was deserted by the tide nearly a hundred yards astern, around which he could have walked dry, about the sixth or seventh of June aforesaid.

The eighth. Deponent says he has answered in his general deposition just made.

The ninth. He answers no.

JOSHUA S. OLDNER.

THOMAS KELL.

Deposition of James Brown.

I, James Brown, of Hamilton, in the commonwealth of Massachusetts, of the age of thirty-eight years, do testify and declare, that I was master of the brig Hope, owned by Turner Ashby, Magnus T. Stribling and Peter Hewitt, of Alexandria, in the District of Columbia, which brig sailed from said Alexandria for Barbadoes, in the month of May, in the year of our Lord eighteen hundred and twenty-five, loaded with flour and bread. The said brig, at the time when she sailed, was in good order, and well supplied with men and provisions. The whole number of men, including myself and mate, were seven. I sailed from Alexandria in said brig about twelve o'clock at noon, on the twenty-seventh day of May, in the year aforesaid, and proceeded nearly as far as Cape Henry, when the wind blew strong from the east north-east, the tide setting in powerfully. I found it impossible to get out to sea, and thought it prudent to attempt to make a harbour before night came on, and I bore away for Sewall's point, and at three o'clock in the afternoon of the third of June, I came to anchor at said point, and sent down the royal and top gallant yards, and made every thing as snug as possible. The wind increased until about ten o'clock in the evening, when I let go the small bower anchor and payed out a long scope of cable to both anchors. The wind blowing with more violence, about twelve o'clock in the night, I let go the kedge anchor, with a *horser* lent to it, and paid out more cable to each of the anchors. About four o'clock in the morning of the fourth of June, the wind blew with great violence, and the sea run high, and I paid out all the cable which I had on board; at this time the sea broke over the brig and I found that she drifted. At eight o'clock the brig ceased drifting; about eleven o'clock the wind blew with great violence; the brig pitched into the sea; the windlass was *riped* up; and the chain cable parted, and the brig again drifted and struck on the bank, in two and a half fathom of water, about half a mile below Craney island. Finding that she would go on shore, I slipped her cables, and let her go before the

wind. The sea broke over the brig at such a rate, that it was not possible to cut away the mast, but could this have been done, held as they were by the rigging, they would probably have endangered the hull of the brig, and exposed the cargo to greater hazard of loss. About twelve o'clock she run on shore; her false keel was knocked off, and her rudder broken off below the rudder case, and the small boat was stoven. About half past twelve the wind began to subside, and the tide to fall, and about four o'clock she was left high and dry. After this I went to Norfolk and procured lighters and took out the cargo and carried it to Norfolk, and stored it there in good order. The brig could not be got off, was surveyed, condemned and sold. I afterwards found the best bower anchor and the kedge anchor; one of the arms of the bower anchor was straightened, and one of the arms of the kedge anchor broken off.

Question proposed by Mr. Sewall, counsel for the plaintiff.

What was your reason for slipping your cables, as you have said that you did?

Answer. I considered that the safety of the crew and cargo required it. Had she been confined in the degree in which the anchors would have held her, her broad side would have been exposed to the wind and sea, and the danger of the ship, cargo and crew greatly increased.

JAMES BROWN.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, ss.

February 10th, 1829.

Personally appeared before me, Artemas Ward, esquire, chief justice of the court of common pleas, the within named James Brown, and, after being carefully examined and cautioned and sworn by me, to testify the truth, the whole truth, and nothing but the truth, made oath to the truth of the within deposition; which deposition was reduced to writing by myself, and subscribed by him, in my presence. The said deposition is taken at the request of Turner Ashby, Magnus T. Stribling and Peter Hewitt, and to be used in an action in which they are plaintiffs and Mordecai Miller defendant, pending in the circuit court of the United States, for the District of Columbia, next to be holden at Alexandria, within and for the county of Alexandria, on the second Monday of April next. The deponent living in Hamilton, in Massachusetts, which is more than one hundred miles from Alexandria, the place of trial, is the cause of the taking of this deposition; and the said Miller and his attorney living more than one hundred miles from Boston, the place where the said deposition is taken, were not notified of the taking of the said deposition. And I hereby certify, that I have never been of counsel for either of the said parties, nor am I in any way interested in the event of the said suit.

This deposition is taken by Artemas Ward, chief justice of the court of common pleas, of the commonwealth of Massachusetts.

Auditor's Report.

Statement of the general average on brig Hope, James Brown, master, from Alexandria to Barbadoes, stranded near Craney Island; the cargo got out without material damage, and the cargo reshipped to its original destination by the brig Washington, Dow:

Auditor's Report.

A.

Brig valued at the time of her sailing at		$3000	
Deduct the neat proceeds of the wreck &c., paid to Ashby and Stribling		256,40	
			$2743,60
Sum insured in Columbian Insurance office			1000
			1743,60
Freight 1288,71; less one third 429,57			859,14
Charges of reshipment &c., paid by Columbian office			341,80
Adjusting the average			4,46
Amount of Loss			$2949
	2949		
	859,14		
Contribution	$2089,86		
To be made by cargo—Insurance thereon by C. office		$4920	
Not insured by shippers		315,99	
			5235,99
Brig			3000
Neat freight not insured			859,14
Total amount of contributory values			$9095,13
If 9095.13 : lose 2949 : : 100 will lose 32.424 per ct.			
To pay, according to the entry at Custom House.			
Cargo in M. Miller and Son	$4920		
Insured in Columbian office at foregoing rate			$1595,27
	77,07 not covered	102,45	24,99
John C. Vorrell	71,06		23,04
Ashby and Stribling	167,86		54,42
	5235,99		1697,72

Brig	3000		972,72
Freight	859,14		278,56
	$9095,13		$2949
Columbian Insurance Company, contribution as above			$1595,27
But they have already paid charges of reshipment		341,80	
And are to pay fee for ajustment		4,46	
			346,26
Amount payable by Columbian Insurance Company			[$1249,01
Shippers pay as above mentioned			102,45
Owners of the brig lose		$972,72	
And freight		278,56	
			1251,28
Amount of loss			$2602,74

Being the balance of the value of the vessel and freight uninsured, as before mentioned.

B.

If the amount of the estimated freight is excluded, the loss to make good by the general average would be $2089,80

And proceeding on this ground the loss would be at the rate of 25.374 per cent. on cargo insured.

77,07 M. Miller and Son	19,56	$4920	1248,40
71,06 J. C. Vorrell	18,05		
167,86 Ashby and Stribling	42,69 not insured	315,99	80,18
———	315,99		
On Brig		3000	761,22
		$8235,99	$2089,80
According to foregoing statement the Columbian Insurance Company pay			1248,40
Less 341,80 and 4,46 already paid			446,26
		1248,40	902,14
Shippers pay		80,18	80,18
Owners of vessel pay		761,22	761,22
		$2089,80	
Amount of loss on the above principle			$1743,54

COMMISSIONER'S OFFICE, December 21, 1837.

In pursuance of the order made at last term in the case of Ashby, Stribling and Hewitt vs. the Columbian Insurance Company, in which there was a judgment for the plaintiff on a special verdict, your commissioner has to report that after due notice of the respective parties of the time of proceeding in, and closing the subject of reference, he has made the foregoing statements; by the first (marked A.) the defendants are found indebted to the plaintiffs in the sum of ($1249,01,) twelve hundred forty nine dollars and one cent; by the second (marked B.) in the sum of ($902,14,) nine hundred and two dollars and fourteen cents; the latter is made upon the principle of excluding the freight, it not having been taken notice of in the special verdict. The first he considers the correct principle. Interest ought to be allowed from the 20th August, 1825. All which is respectfully submitted.

COLIN AULD, *M. C.*

Agreement.

AGREEMENT OF COUNSEL.

In this case, it is admitted, that to avoid expence and the multiplication of parties, it was agreed between the counsel, that an action on the case should be instituted against Mordecai Miller, then president of the Columbian Insurance Company, in which action, without exception or regard to form, such evidence and proceeding should be had and admitted as would disclose the facts connected with the loss of the brig Hope, and upon which the true question between the parties should be tried; that is, whether the plaintiffs were entitled to recover, against the owners of the cargo, for contribution to an average loss. That the suit was commenced accordingly, but Mr. Miller having objected to the use of his name, after the jury had been impannelled in the cause, it was then suggested and agreed to, that the cause should proceed on its merits before the jury, and a declaration should afterwards be drawn on the bond of M. Miller, president, and John A. Stewart, and substituted in the place of the suit as at first agreed on; and that in like manner without regard to form, the real question only between the parties should be contested; that under this arrangement the cause progressed, and the jury found the special verdict which has been submitted to the court.

It is also agreed that the sum of $1500 invested in the said verdict, was not considered as the sum actually due by the def'ts, but that the liability of the def'ts being settled, a statement of the amount due was to be ascertained by reference to an auditor, and his finding substituted for the said sum of $1500.

Record Ashby and Stribling vs. Columbian Insurance Company.

Record Ashby and Stribling against the Columbian Insurance Company of Alexandria, referred in the special verdict of the jury, page of this record.

DISTRICT OF COLUMBIA, *to wit:*

Pleas before the Honorable the Judges of the United States Circuit Court of the District of Columbia for the county of Alexandria, at the court-house of the said county, the 25th day of April, in the year of our Lord 1828.

TURNER ASHBY and MAGNUS T. STRIBLING, trading under the firm of Ashby and Stribling, plaintiffs,
against
THE COLUMBIAN INSURANCE COMPANY OF ALEXANDRIA, defendants.

Be it remembered, that heretofore, to wit; on the 26th day of November, 1825, came the plaintiffs aforesaid by Thomson F. Mason their attorney, and sued out of the clerk's office of the said court a writ of capias as respondendum against the said Columbian Insurance Company, which writ, with the endorsement and return thereon is in the words and figures following, to wit:

DISTRICT OF COLUMBIA, *to wit:*

[L. S.] The United States of America, to the marshal of the District of Columbia, greeting:

We command you that you take the Columbian Insurance Company of Alexandria, if they be found within the county of Alexandria in your said District, and them safely keep so that you have their bodies before the Honorable the Judges of the United States circuit court of the District of Columbia for the county of Alexandria, at the court-house in the town of Alexandria, at the next court to answer Turner Ashby and Magnus T. Stribling, under the firm of Ashby and Stribling, of a plea of trespass on the case. Damages two thousand dollars, have then there this writ. Witness the Honorable William Cranch, chief judge of the circuit court of the District of Columbia, this 26th day of November, 1825.

EDM. J. LEE, *C. C.*

Endorsement.—"Action on the case. No bail required."

Return.—Came to hand to late too execute.

D. MINOR, *D. M. for*
J. RINGGOLD, *Marshal.*

And at the rules held in the clerk's office for the month of January 1826, came the plaintiffs aforesaid by their attorney, and sued out of the office of the said court, a writ of alias capias ad respondendum against the said Insurance Company, which writ, with the endorsement and return thereon, in the words and figures following:

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the marshal of the District of Columbia, greeting:

We command you as heretofore, that you take the Columbian Insurance Company, if they be found in the county of Alexandria in your said District, and them safely keep, so that you have their bodies before the Honorable the Judges of the United States circuit court of the District of Columbia for the county of Alexandria, at the court-house in the town of Alexandria, at the next court, to answer Turner Ashby and Magnus T. Stribling, trading under the firm of Ashby and Stribling, of a plea of trespass on the case. Damage two thousand dollars. And have then there this writ. Witness the Honorable William Cranch, chief Judge of the circuit court of the District of Columbia this 11th day of January, 1826.

EDM. J. LEE, *C. C.*

Endorsement—"Action on the case. No bail required."

Return. "Executed on Mordecai Miller, president of the Columbian Insurance Company, and on Richard Veitch and Peter R. Beraby, directors of the said company.

C. SCOTT, *D. M. for*
J. RINGGOLD, *Marshal.*

And at the rules held in the clerk's office of the said court for the month of July 1826, came the defendants aforesaid by Robert J. Taylor their attorney, and a day is thereupon given the plaintiffs until the next rules to file their declaration, and the same day is given the said defendants there &c.

And at the rules held in the clerk's office of the said court, for the month of August 1826, came the defendants by their attorney, and the plaintiffs having been ruled to file their declaration, and failing so to do, on the motion of the defendants by their attorney, it is ordered that the suit be dismissed, their costs by them above their defence in this behalf expended.

At an other day, to wit: at an United States circuit court of the District of Columbia, and held for the county of Alexandria, the 18th day of November, 1826, came the plaintiffs aforesaid by their attorney, and on motion it is order that the dismission for want of declaration be set aside, and the cause reinstated. Whereupon the plaintiffs filed their declaration, which is in the words and figures following, to wit:

Declaration.

ALEXANDRIA COUNTY, *to wit:*

Turner Ashby and *and* Magnus T. Stribling, trading under the firm of Ashby and Stribling, complain of the Columbian Insurance Company of Alexandria, in custody, &c., of a plea of trespass on the case. For that the said Insurance Company on the 28th day of May, 1825, at the county aforesaid, made and entered into a certain writing, commonly called a policy of Insurance, with the said plaintiffs; wherein is contained, that the said Columbian Insurance Company had insured and thereby did insure Ashby and Stribling, (the said plaintiffs,) lost or not lost from Alexandria to and at Barbadoes, and back to a port in the United States upon the body, tackle and apparel and other furniture of the good brig called Hope, whereof Brown was master for that voyage. Beginning the adventure upon the said vessel, tackle, apparel and furniture from Alexandria aforesaid, and continuing the same until the vessel be arrived at Barbadoes and back to a port in the United States aforesaid, and until she be moored there twenty-four hours in good safety. The said vessel, her tackle, apparel and furniture, for so much as consumed that insurance by agreement between the insured and insurers were and should be valued at the sum insured, the vessel valued at three thousand dollars. And that it should and might be lawful for the said vessel in her voyage to proceed and sail, to touch and stay at any ports or places, if thereunto obliged by stress of weather or other unavoidable accident without prejudice to that insurance. The adventures and perils which the insurers were contented to bear and take upon themselves in said voyage, were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, unlawful arrests, restraints and detainments of all kings, princes and people, of what nation, condition or quality whatsoever; barratry of the master and mariners, and such other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the said vessel, or any part thereof as insurers are legally accountable for; warranted nevertheless by the insured, free from any charge, damage or loss which might arise in consequence of a seizure or detention of the said brig, or of the goods laden or to be laden therein, by reason or on account of any illicet or prohibited trade, or trade in articles countraband of war; and in case of capture or detention for adjudication; the insured did renounce all claims against the insurers for demurrage, seamens wages and provisions. And in case of any loss or misfortune by way of the perils insured against, it should be lawful to and for the insured, their factors, servants, assigns (and the insured on their part agreed and engaged by themselves, their factors, servants or assigns,) to sue, labor, and travel, for, in, or about the defence, safeguard and recovery of the said vessel or any part thereof without prejudice to this insurance; to the charges whereof the said insurers would contribute according to the rate of the sum hereby insured, and so the said insurers were contented and stood bound to the insured, their executors, administrators and assigns for the true performance of the premises, confessing

themselves paid the consideration of this insurance by the insured, at and after the rate of two and a half per cent; and that in case of loss the same should be paid in sixty days after proof and adjustment thereof, without any deduction, (except the amount of the premium if then unpaid,) provided such loss should amount to five per cent. on the sum hereby insured, under which no payment should be made, unless in case of general average. In all cases of return premium, one half per cent. on the sum insured, should be retained by the insurers. No part of the premium should be returned or abated on account of any deviation from the voyage hereby insured. It was thereby agreed that the insured should not abandon to the insurers until sixty days had elapsed after having given notice to them of their intention so to do, and of the loss or event which might entitle the insured thereto. It was declared and understood that if the above mentioned brig, after a regular survey, should be condemned for being unsound or rotten, the insurers should not be bound to pay the sum hereby insured nor any part thereof. It was also agreed by the parties to this policy, that in all instances where insurance were made, to or from any ports or places, at or on this side of the Cape of Good Hope or Cape Horn, the lapse of twelve months from the time of sailing or being last heard of, should be considered as a proof of loss; which loss the insurers agreed to pay without further dalay, and to or from any ports or places beyond either of the said capes, the lapse of eighteen months from the time of sailing, or being last heard of, should be considered as proof or loss, entitling the insured to receive payment as aforesaid. And the president of the said Insurance Company then and there subscribed his name to the said policy of insurance, and the secretary of the said company countersigned and gave his attestation to the same. The sum insured, to wit: one thousand dollars having been previously written at the bottom of the said policy of insurance, as by the said policy of insurance reference being had thereto, will more fully and at large appear. And thereupon afterwards, to wit: on the same day and year aforesaid, at the county aforesaid, in consideration that the said plaintiffs had, at the special instance and request of the Columbian Insurance Company, paid them the sum of twenty-five dollars as the premium of thousand dollars, according to the tenor of the aforesaid policy of insurance, and had then and there promised to perform all things contained in the policy of insurance on his part to be performed. The said Columbian Insurance Company undertook, and faithfully promised to said plaintiffs that they would become, and they did then and there become insurers of the said vessel for the voyage aforesaid, according to the tenor and effect of the writing aforesaid, for the sum of one thousand dollars, to be assured by the writing aforesaid, being the sum by the Insurance Company subscribed to the said writing, and could perform and fulfill all things in the said policy of insurance mentioned on their part and behalf, as insurers of said sum of one thousand dollars to be performed and fulfiled, and the said plaintiffs aver that they were then and there at the time of making said insurance, and from then continually afterwards, until, and at the

time of the loss herein after mentioned, owners of the said brig Hope, and interested therein to the amount of the money by them insured or caused to be insured thereon, to wit: in the amount of one thousand dollars as aforesaid.

And the plaintiffs further say, that heretofore, to wit, on the day of the said vessel departed and set sail from Alexandria aforesaid, on her said voyage towards Barbadoes, as aforesaid, and that afterwards, and while the said vessel was proceeding on her said voyage, and before her arrival at Barbadoes aforesaid, to wit, on the day of the said vessel was, by storm and peril of the seas, sunk and wholly lost to the plaintiffs, and never did arrive at Barbadoes aforesaid. Of all which premises the said Columbian Insurance Company afterwards, to wit, on the day of had notice, and that the said plaintiffs had intention of abandoning to the said insurers, and the proof of the loss was then and there duly made and placed in the possession of the said Columbian Insurance Company.

And the said plaintiffs further say, that they did thereafter duly abandon to the said Columbian Insurance Company, and at the end of sixty days from the aforesaid notice, the said Columbian Insurance Company was then and there requested by the said plaintiffs to pay them the said sum of one thousand dollars, by them insured as aforesaid, and which sum the said defendants then and there ought to have paid, according to the tenor and effect of the policy aforesaid, and the said promise, by the defendants so made as aforesaid, and which the said defendants did not pay; and altho the said plaintiffs had performed all things on their part, by virtue of the said policy on his part to be performed, yet the said Columbian Insurance Company has not paid to the said plaintiffs the said sum of one thousand dollars, or any part thereof, tho often requested, but the same to pay always hath and still doth refuse, to the damage of the plaintiffs of two thousand dollars. And therefore they bring suit, &c.

THOMSON F. MASON.
Pro que.

And at the rules held in the clerk's office of the said court for the month of December 1826, it was ordered that judgment be entered for the plaintiffs against the defendants, for what damages the plaintiffs had sustained by reason of the non performance of the promise and assumption in the declaration mentioned, unless the defendants should appear and plead to issue at the next rules.

At which day, to wit, at the rules held in the clerk's office of the said court for the month of January, 1827, came the plaintiffs aforesaid, by their attorney, and the defendants still failing to appear, on the motion of the plaintiffs, it was ordered that the last order made against them be confirmed, and that the plaintiffs damages be ascertained by a jury at the next term.

At another day, to wit, at a court continued and held for the district and county aforesaid, on the 15th day of November, 1827, came as well the plaintiffs, by their said attorney, as the defendants,

by their attorney; and thereupon the defendants, defended the force and injury whereon. And for plea, said that they did not assume upon themselves in manner and form as the plaintiffs against them have alledged, and of this they put themselves upon the country and the plaintiffs likewise; whereupon it was ordered that the judgments obtained in the office be set aside.

At another day, to wit, at a court continued and held for the district and county aforesaid, on the 18 day of April, 1828, came the parties aforesaid, by their attorneys and the cause was continued.

At another day, to wit, at a continued and held for the district and county aforesaid, the 23d day of April, 1828, came the parties aforesaid, by their attorneys, and the order of continuance is set aside; and it is agreed by the counsel for the parties, that if the jury find for the plaintiffs, they shall state whether they find for a partial or total loss, and in either case damages shall be assessed at the sum insured with interest. The precise amount to which they may be entitled, if a verdict be found in their favor, shall be ascertained by the auditor under the instruction of the court, and the damages assessed shall be discharged by the sum by him reported, and settled by the court. And thereupon came a jury, to wit, Matthew Robinson, Aaron D. Harmon, John Wood, Alexander M. Rose, Charles Fletcher, William E. Thompson, William Page, Thomas E. Baird, John Washington, Samuel M. Janney, William Stabler, and Saml. Lindsay, who being sworn and affirmed well and truly to try the issue joined, by consent of parties and with the assent of the court, are continued until to-morrow.

At another day, to wit, at a court continued and held for the district and county aforesaid, on the aforesaid 24th day of April, 1828, came the parties aforesaid, by their attorneys, and the jury sworn to try the issue in this cause appeared in court and returned the following verdict, to wit, "we of the jury find for the plaintiffs a total loss and assess their damages at two thousand dollars," therefore it is considered that the plaintiffs recover of the said defendants their damages aforesaid, by *by* the jurors aforesaid assessed, and also their costs by them about their suit in this behalf expended. And the said defendants in mercy &c.

Plaintiffs' costs $62,57.
Defendants' costs $24,26.

Whereupon the defendants tendered a bill of exceptions, which is signed, sealed, and ordered to be enrolled; which bill of exceptions is in the words and figures following, to wit:

Bill of Exceptions.

MEMORANDUM.—On the trial of this suit, to support the issue on their part joined, the plaintiffs gave in evidence to the jury, a policy of insurance, admitted to have been executed by the defendants on the schooner Hope, for the voyage in the declaration mentioned in these words.

By the Columbian Insurance Company of Alexandria.

No. 777 Vessel 1000$.

This policy of insurance witnesseth that the Columbian Insurance Company have insured, and hereby do insure Ashby & Stribling, lost or not lost, from Alexandria to and at Barbadoes and back to a port in the United States, upon the body, tackle, and apparel and other furniture of the good brig called Hope, whereof Brown is master for the present voyage. Beginning the adventure upon the said vessel, tackle, apparel, and furniture, from Alexandria aforesaid, and continue the same until the said vessel be arrived at Barbadoes and back to a port in the U. States aforesaid, and until she be moored there 24 hours in good safety. The said vessel, her tackle, apparel and furniture for so much as concerns this insurance, by agreement between the insured and insurers, are and shall be valued at the sum insured; the vessel valued at three thousand dollars. And it shall and may be lawful for the said vessel in her voyage to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The adventures and perils which we, the insurers, are content to bear and take upon us in this voyage, are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart & countermart, surprisals, takings at sea, unlawful arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition or quality soever, barratry of the master and mariners, and all such other perils, loses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said vessel, or any part thereof, as insurers are legally accountable for, warranted nevertheless by the insured, free from any charge, damage, or loss which may arise in consequence of a seizure or detention of the said brig, or of the goods laden, or to be laden therein, by reason, or on account of any illicit or prohibited trade, or trade in articles contrabrand of war. And in case of capture or detention for adjudication, the insured renounce all claims against the insurers for demurrage, seamen's wages, and provisons. And in case of any loss or misfortune by any of the perils insured against, it shall be lawful to and for the insured, their factors, servants, and assigns, to sue, labor, and travel for, in, or about the defence, safeguard and recovery of the vessel or any part thereof, without prejudice to this insurance, to the charges whereof the said insurers will contribute according to the rate of the sum hereby insured. And so the said insurers are contented and stand bound to the insured, their executors, administrators, and assigns for the true performance of the premises, confessing themselves paid the consideration for this insurance by the insured, at and after the rate of two and a half per cent. In case of loss, the same shall be paid in sixty days after proof and adjustment thereof, without any deduction (except the amount of the premium if then unpaid) provided such loss shall amount to five per cent. on the sum hereby insured, under which no payment shall be made, unless in case of general average.

In all cases of return premium, one half per cent. on the sum insured shall be retained by the insurers. No part of the premium shall be returned or abated on account of any deviation from the voyage hereby insured.

It is hereby agreed that the insured shall not abandon to the insurers until sixty days have elapsed after having given notice to them of their intention so to do, and of the loss or event which may entitle the insured thereto. It is declared and understood that if the above mentioned brig, after a regular survey should be condemned for being unsound or rotten, the insurers shall not be bound to pay the sum hereby insured, nor any part thereof. It is also agreed by the parties to this policy, that in all instances when insurances are made to or from any ports or places, at or on this side of the Cape of Good Hope or Cape Horn, the lapse of twelve months from the time of sailing or being last heard of, shall be considered as a proof of loss, which loss the insurers agree to pay without further delay; and to or from any ports or places beyond either of the said capes, the lapse of eighteen months from the time of sailing or being last heard of shall be considered as proof of loss, entitling the insured to receive payment as aforesaid.

In witness whereof the president of the said Columbian Insurance Company hath hereunto subscribed his name and the sum insured, with the attestation of their secretary, at Alexandria on the 28th day of May in the year one thousand eight hundred and twenty-five.

One thousand dollars.

MORDECAI MILLER,
President.

JAMES SANDERSON, *Secretary.*

And a letter of abandonment from M. T. Stribling, one of the plaintffs dated the day of June 1825, and delivered to the defendants on the 17th day of the same month, which letters are in these words.

NORFOLK, 14*th June*, 1825.

GENTLEMEN: The surveyors of the brig Hope having recommended her to be sold for the benefit of the concerned, you are hereby notified that we abandon our interest, insured in said brig in the Columbian office, and shall look to it for payment.

Respectfully,
ASHBY & STRIBLING.

To the President and Directors of the Columbian Insurance Office, of Alexandria.
Tuesday, 14.

Rec'd Friday, 17th.

The above letter was directed as follows: "To James Sanderson, Esq., Secretary of the Columbian Insurance Office, Alexandria, D. C.

A survey of the said Schooner in these words:

We, the subscribers, being called on by James D. Thorburn, Esq., agent for the concerned, to proceed below Craney Island, there to hold a survey on the brig Hope of Alexandria, James Brown, Master, from Alexandria, bound to Barbadoes, loaded with flour and bread, which vessel had been cast ashore in the severe gale and unprecedented high tide of the fourth instant. We found the said brig about half a mile below Craney Island laying in the sand above high water mark, both anchors gone, small boat stove, rudder broken off, main-topsail blown to ribbons.

As the shallow water extends to a great distance outside where the brig lays, considering also the injury the vessel must have sustained in thumping, as well as the further injury to be apprehended from the attempts to get the vessel over such an extensive shoal, together with the expense and labor, which we think would be so great, that we recommend the brig to be unloaded and the hull and appurtenances to be sold for the benefit of all concerned.

Given under our hands and seals, this 6th day of June, 1825.

JACOB VICKERY, [SEAL.]
A. MACHUE, [SEAL.]
DICKIE GALT, [SEAL.]

STATE OF VIRGINIA, *District of Norfolk*, ss.

Before me, William G. Lyford, a notary public for the district aforesaid, by lawful authority duly commissioned and qualified, personally came Jacob Vickery, master, Alexander Maclure, merchant, and Dickie Galt, master ship carpenter, all to me well known, residing in the borough of Norfolk and respectable in their respective professions, and made oath on the holy evangelists of Almighty God that the facts set forth in the within report of survey to which their names are subscribed are truly stated.

In testimony whereof, I have hereunto set my hand, and affixed my notarial seal, this thirteenth day of June, in the year of our Lord one thousand eight hundred and twenty-five. [L S.]

W. G. LYFORD, *Notary Public.*

And read to the jury the depositions of Bradley Osbourne, Jacob Vickery, and James D. Thorburn; which depositions are in these words:

VIRGINIA, *Borough of Norfolk, to wit:*

Depositions of Bradley Osburne, Jacob Vickers, and James D. Thorburn, taken at the mayor's office in the borough of Norfolk afore-

said, on the 15th day of October, in the year eighteen hundred and twenty-seven, to be used as evidence in two suits pending in the circuit court of the United States for the county of Alexandria, in the District of Columbia, in one of which, Turner Ashby and Magnus T. Stribling, trading under the firm of Ashby and Stribling, are plaintiffs, and the Columbian Insurance Company of Alexandria, are defendants; in the other, the said Ashby and Stribling and Peter Hewitt, are plaintiffs, and the said Insurance Company, are defendants.

The deponent Bradley Osburn being duly cautioned and sworn, deposeth and saith, that he commanded the sloop Independence of Fairfield, in the State of Connecticut, and sailed from Alexandria on the 27th day of May, eighteen hundred and twenty-five, bound for New York, laden with a cargo of flour, tobacco, &c. &c. That before he left the river Potomac, he was in the company of the brig Hope, Captain Brown, also from Alexandria, bound down the bay, and from the winds they had, and the course bound, (to wit, to sea,) presume they could not have been far apart all the passage down. There was nothing material happened in the weather until the third of June, when a breeze sprung up from the Northeast, accompanied by a heavy rain. The appearance of the weather being very awful, induced deponent to run up through Hampton roads, and under the lee of Sewell's Point for a harbor, as he thinks as every person bound to sea ought to have done, as no prudent person could have gone to sea under such circumstances; on the next day, after anchoring under Sewall's Point, the gale increased from E. N. E., and a heavy rain came on; at midnight, it became so violent, as to induce the deponent to let go the small bower anchor, and to veer away on both cables, but the gale still continuing to increase, at 6 A. M., the length of both cables was veered out and the vessel then struck adrift. Apprehensive that his vessel, if both anchors were hanging and dragging to her, would sustain serious injury when she struck, by thumping, deponent thought it most prudent to slip her cables, which he did, put the vessel's head towards the land, and at 10 A. M., she struck bottom on Craney Island flats, and the tide still rising, continued to work on until 11 P. M., when she became hard and fast. The surf was so heavy as to stave in the larbord dead lights, and so violent a tempest deponent never before saw or experienced. On the next day, (fifth of June,) found that his sloop was ashore on high water mark, and that six or seven other vessels were also ashore near him; among them the brig Hope before mentioned, whose situation deponent thinks was as bad as any of those which were not got off. Deponent, subsequently, with great trouble and expense, got his vessel off, but solely because she had gone up so far, that he was enabled to work under her to advantage in getting ways under her, by which he ultimately launched her over the island. From deponent's knowledge and recollection of the weather on the third and fourth days of the said month of June, does not think it would have been any thing else than the *hight* of imprudence to have went to sea, and that Captain Brown acted strictly correct in coming into Hampton roads, and

making a harbor in the manner he did. Deponent saw the condition of the brig Hope while ashore, and does not think she would have been got off without incurring a greater expense than she would have sold for thereafter. Deponent recollects very well, that a schooner bound from Alexandria to an Eastern port, (believes) Portsmouth, which sailed before he did, in attempting to get to sea, got ashore on the beach, Lynhaven Bay, in the same gale that proved so destructive to him and the other shipping at Sewall's Point.

BRADLEY OSBORN.

The deponent, Jacob Vickery, being duly cautioned and sworn, deposeth and saith, that he was formerly a shipmaster out of the port of Norfolk, but of late years has acted as weigher and guager for this collection district, occasially assisting his brother, when not otherwise engaged, in his ship-chandlery store. That he was one of the surveyors who, on the sixth of June, 1825, repaired on board the brig Hope of Alexandria, J. Brown, master, which vessel was cast on shore near to Craney Island, on the fourth of the said month, and that on reaching her, found that she was above high water mark, and settled some feet in the sand; that her situation in the sand was such, together with the damages she had sustained as to induce the survey (and there were two others besides himself, both of whom, however, have since removed from this place) to recommend that her cargo should be unladen, and the brig sold for the benefit of all concerned. The survey, deponent states, in making up their opinion, took into consideration the actual state of the vessel, and the immense distance which she was from a sufficient quantity of water to float her; the great expense of getting her off; and the additional expense in repairing and fitting her again to sea, would have been greater (than in the opinion of the survey) the said brig would have been worth or sold for, had they recommended a course different from the one they did. And in confirmation of this opinion, deponent states, that the purchaser of the said brig actually burnt her for the purpose of getting the iron out of her.

JACOB VICKERY.

The deponent, James D. Thorburn, being duly cautioned and sworn, states that during the year eighteen hundred and twenty-five, he was and still is a merchant of the borough of Norfolk. That some time in the month of June of that year, Captain Brown of the brig Hope of Alexandria, applied to him to attend to the business of the said brig, she having been forced on the flats of Craney Island, (as he understood) in the gale of the fourth of that month, that he did accordingly undertake the management of the affairs of that vessel, and appoint a survey agreeably to the custom of the place, of three respectable persons, to wit, a gentleman, who was formerly a shipmaster, a merchant, and a shipwright; and in pursuance of the report by them rendered to him of their survey, did proceed to sell in the borough of Norfolk to the highest bidder at public auction, on the eighteenth day of the same month, the hull and materials of the said

brig; which sale was conducted under the superintendence of Messrs. H. and W. Punn, auctioneers, after having been previously advertised several days in the public papers of Norfolk. At this sale, Magnus T. Stribling, one of the owners of the brig Hope, was present. Shortly after it had commenced, and when but one or two articles (as well as he remembers) had been sold, a letter was handed him purporting to be from James Sanderson, secretary of the Columbian Insurance Company of Alexandria, protesting against the sale, (a copy of which is hereto annexed.) In consequence of which, deponent immediately ordered it to be stopped, and delivered the letter to Mr. Stribling to read; who, after some consultation, directed the sale to be continued, which was accordingly completed. Deponent then thought, and still thinks, the course then pursued by the said James Sanderson, must have been designed to perplex and embarrass the persons who were engaged in the management of the affairs of the said vessel, since the letter was not delivered until the sale had commenced, and no authority was shown by him from the said Insurance Company, to make arrangements for getting the vessel off, or to defray the expence that had been already incurred on her account.

JAMES D. THORBURN.

VIRGINIA, *Borough of Norfolk, to wit:*

I, John E. Holt, mayor of the said borough, not being counsel or attorney to either of the parties to the causes in which the foregoing depositions are intended to be read in evidence, and not being in any way interested in the event thereof, do hereby certify, that the aforesaid Bradley Osburn, Jacob Vickery, and James D. Thorburn, were on this day at my office in the borough aforesaid, by me carefully examined, and cautioned, and sworn, to testify the whole truth in the causes aforesaid; and that the foregoing depositions of the said witnesses were reduced to writing by me, and subscribed by them respectively in my presence. I also certify, that the said depositions were taken at the instance of the plaintiffs in the causes of the caption thereof mentioned. I do further certify, that I directed a copy of the annexed notification to be served on Albert Allmond, Esq., attorney for the said defendants, which appears from the affidavit endorsed thereon to have been left at his office, he being at the time absent from this borough. And further, that the reason for taking the said depositions was, the said deponents all live at a greater distance from the place of trial in the caption mentioned, than one hundred miles; all of them being residents of this borough.

In witness whereof, I have hereunto subscribed my name, and caused the seal of my office to *the* affixed at Norfolk, on this [L. S.] fifteenth day of October, in the year of our Lord one thousand eight hundred and twenty-seven.

J. E. HOLT, *Mayor.*

ALBERT ALLMAND, ESQ., *Attorney for the Columbian Insurance Company of Alexandria.*

SIR: Take notice, that on Monday next, the 15th instant, at the court-house in this borough, between the hours of seven in the morning and three in the afternoon, I shall proceed to take the depositions of Jacob Vickery, Bradley Osborn, and James D. Thorburn, to be read in evidence in certain suits depending in the circuit court of the United States for the District of Columbia, in one of which, Turner Ashby and Magnus T. Stribling, trading under the firm of Ashby and Stribling, are plaintiffs, and the Columbian Insurance Company of Alexandria, are defendants; and in the other, the said Ashby and Stribling, and Peter Hewitt, are plaintiffs, and the said Insurance Company, are defendants, when and where you may attend, if you think proper.

Your obedient servant,

Signed JOHN HOLT, *Mayor.*

Norfolk, October 13, 1827.

STATE OF VIRGINIA, *Borough of Norfolk, sct.*

Before me, Isaac Talbot, an alderman for the borough aforesaid, personally came William G. Lyford, and made oath according to law, and stated, that on the thirteenth day of the present month, between the hours of nine in the morning and twelve at noon, he left a copy of the within notice at the office of Albert Allmand, Esq., in this borough. Sworn to, this fifteenth day of October, 1827.

ISAAC TALBOT.

[COPY.]

MR. JAMES D. THORBURN:

SIR: Having come to Norfolk at the request of the Columbian Insurance Company of Alexandria, to give any aid to the owners of the brig Hope, I now through you, offer that assistance as regards money which may be required to put the vessel in that situation that the voyage may be pursued; at the same time, I reserve to the Company all right of defence in case the said Company should not be liable for any part of the expence attending the business. I also observe you have advertised the said brig with all her materials for sale this day, against which procedure I deem it my duty to make my solemn protest in behalf of the said Company, for the following reasons:

First. The authority deputed to you by Capt. Brown is not legal and sufficient.

Second. Because the surveyors were not legally or judicially appointed.

Third. Because no attempt has been made to get the brig off the beach, or any estimate made of the expence required to get her in a place of safety, and of the repairs in order to pursue her voyage.

Fourthly. Because the sale is premature and inconsiderately made.

I am, very respectfully,
Your most obedient servant,
(Signed) JAMES SANDERSON,
Sec'y C. I. Co. of Alexandria.

Norfolk, 18th June, 1825.

A true copy. JAMES. D. THORBURN.

And further proved, by John Rumney, a witness, that he visited the said vessel after she was stranded, and particularly examined her situation, with a view to purchase her; that she lay deep in the sand, quite upright, as when afloat, and he could easily step on board of her from the surrounding beach; that the flats ran to a great distance out from the place where she lay, upwards of a mile, to the first small swash channel; that he supposed it would cost at least from $700 to $1,000, independent of all risk or accidents, to get her off, and that he declined all idea of bidding for her; that he would not have accepted said vessel as a present, on condition that he should be compelled to get her off.

And further proved, by Nicholas Drease and ——— Germini, that they are sail makers in the town of Alexandria, and that they overhauled and thoroughly repaired the sails and rigging of said vessel, immediately before her sailing on the voyage upon which she was lost; that the sails were old, but were lined and patched wherever required, and put in a state of good repair, and were perfectly competent and sufficient for the voyage, and that they would cheerfully have undertaken the voyage in said vessel with said sails, rigging and equipment.

The defendants, on their part, gave in evidence to the jury the depositions of Thomas Rooke, John Allmand, Ezra Sampson, John McPhail, William Pannell, James D. Thorburn, in the words and figures following:

VIRGINIA: *Norfolk Borough, to wit:*

The deposition of Thomas Rooke, taken at the Mayor's office in the borough of Norfolk, on the twelfth day of January, in the year of our Lord eighteen hundred and twenty-six, to be read in evidence in two suits pending in the Circuit Court of the United States for the District of Columbia; in one of which, Turner Ashby and Magnus T. Stribling are plaintiffs, and the Columbian Insurance Company of Alexandria are defendants; and in the other, the same Turner Ashby and Magnus T. Stribling and Peter Hewett are plaintiffs, and the same Insurance Company are defendants:

The said deponent, being of lawful age, and being duly cautioned, and examined, and sworn to testify the whole truth, in the causes above mentioned, says, that sometime in the month of June last, he

thinks about the fifteenth or sixteenth, application was made to him, and to Mr. Porter, of Portsmouth, by Mr. James Sanderson, whom he understood to be the secretary of the Columbian Insurance Company of Alexandria, to know upon what terms this deponent and the said Porter would undertake to get off and deliver at Norfolk a vessel which had been driven on shore at Craney Island, in the gale of the fourth of June last. This vessel was the brig Hope, ——— Brown, master. Deponent, being very much engaged at the time of this application, did not give an immediate answer to it; but a few days afterwards, he thinks about the 18th of the said month of June, in the morning, and before the sale of the brig Hope and her materials, deponent, having consulted with Porter, was willing to contract, and did offer to contract, to get the said brig off, and to deliver her safely at Norfolk, for the sum of five hundred dollars, and to give satisfactory security for the performance of this contract, with this proviso, that if, after having gotten the said vessel off, she should be injured or driven again ashore, by a gale or other extraordinary stress of weather, deponent was not to be responsible; and, on the other hand, nothing was to be allowed him for any expenses he might have incurred, as far as he might have gone. Deponent says that he was several times on board the aforesaid brig Hope, previous to the said eighteenth day of June; that her hold and flooring were perfectly dry, that she was not bilged, and to all appearance, had sustained no injury; that the pitch and oakum in the seems had not started, and that her lower fore-rigging had not been stripped, but remained over the mast head. There were several other vessels on shore near the same place, all of which were gotten off, except the Hope and two others. Deponent himself was employed in getting off two, one of which was at least two hundred yards higher upon the beach than the Hope. She was the schooner Ann, belonging to Daniel Lyon and company, of this place. He has since made two voyages to the West Indies in command of her, and is now loading her, and expects to sail on a third voyage in her in three or four days. Several of the vessels that were gotten off were higher up and in a worse situation than the Hope. Deponent states that he resides in the borough of Norfolk, and further saith not.

THOS. ROOKE.

VIRGIAIA: *Borough of Norfolk, to wit:*

I, John E. Holt, Mayor of the said borough, not being counsel or attorney to either of the parties to the causes in which the foregoing deposition is intended to be read in evidence, and not being in any wise interested in the event thereof, do hereby certify that the aforesaid Thomas Rooke was, on this day, at my office, in the borough of Norfolk, carefully examined, and cautioned and sworn to testify the whole truth, in the said causes; and that the foregoing deposition was reduced to writing by me, and subscribed by the deponent in my presence. I also certify that the said deposition was taken at the instance of the defendants in the aforesaid causes, and that no notice

was given to the adverse party of the taking thereof, because neither the adverse party nor any attorney of theirs was known to be within one hundred miles of the place of caption; and further, that the reasons for taking the said deposition were, that the deponent lives at a greater distance from the place of trial than one hundred miles, and is now also about to go out of the United States, before the time of the trial of the cause aforesaid.

In testimony whereof, I have hereunto set my hand, and the [L. S.] seal of my office, this twelfth day of January, in the year of our Lord eighteen hundred and twenty-six.

JNO. E. HOLT, Mayor.

VIRGINIA: *Borough of Norfolk, to wit:*

The depositions of John Allmand and Ezra Sampson, taken on the 28th day of September, eighteen hundred and twenty-seven, at the Mayor's office in the borough of Norfolk, before me, John E. Holt, Mayor of the said borough, to be read in evidence in two suits depending in the Circuit Court of the United States for the District of Columbia and County of Alexandria; in one of which, Turner Ashby and Magnus T. Stribling are plaintiffs, and the Columbian Insurance Company of Alexandria are defendants; and in the other of which, the said Turner Ashby and Magnus T. Stribling, trading under the firm of Ashby and Stribling, and Peter Hewett are plaintiffs, and the same Columbian Insurance Company are defendants:

The said deponent, John Allmand, being duly cautioned and sworn to testify the whole truth, did depose and say, that some time in the month of June, eighteen hundred and twenty-five—as well as he recollects, about the twelfth or fifteenth—he went, in company with Mr. James Sanderson, on board the brig Hope, then lying ashore near Craney Island beach, and reported to have gone ashore in the gale of the 4th of same month. He remained some time on board the said vessel, and carefully examined her condition. She was not bilged; her hold and flooring were perfectly dry; the pitch and oakum in her seams were not started; and she did not appear to sustain any material injury in the gale. Her lower fore-rigging was standing, and was very indifferent; all the rest of the rigging, as deponent understood, had been taken off to be sold. She did not appear to have settled in the sand, and the tide did not leave her while this deponent remained on board; several other vessels were ashore near the same place, most of them considerably higher up on the beach than the Hope. Deponent has understood and believes that three or four of these vessels were afterwards gotten off. The schooner Ann, which was several hundred yards higher up than the Hope, he knows was gotten off, and was sent to sea, under the command of Captain Rooke. Deponent is well acquainted with Captain Rooke and Mr. Porter; one of them is a ship master, and the other a ship carpenter. Both of them are men of respectability, and

of intelligence and skill in their respective pursuits. They were about that time engaged in partnership together in getting off some other vessels that had gone ashore; and Rooke, in presence of this deponent, agreed and offered to contract that he would deliver the Hope at Norfolk for the sum of five hundred dollars. As well as deponent remembers, they were to be allowed the use of an anchor and cable.

Deponent says that he was present at the auction at which the materials, rigging, &c., of the Hope were sold, and had then an opportunity of examining her equipments, sails and rigging, and that they were generally as poor and as indifferent as he ever saw to a vessel destined on a sea voyage. Some of the sails were stored with the deponent, and he afterwards took them off the purchaser's hands. They were of a very inferior quality, and were certainly not fit for a voyage to the West Indies. Further, deponent saith not.

JNO. ALLMAND.

The before named deponent, Ezra Sampson, being also duly cautioned and sworn to testify the whole truth, did depose and say, that in the month of June, eighteen hundred and twenty-five, a day or two after the gale which occurred on the fourth of that month, this deponent, learning that several vessels had gone ashore on the beach near Craney Island, and being in the habit of purchasing wrecks, went thither for the purpose of examining the condition of the said vessels; that he there saw, among other vessels, the brig Hope, ——— Brown, master; that he went around her, and on board of her, and remained some time on board; and that, while he so continued on board, she was never at any time left entirely by the tide. He remembers, perfectly well, that several vessels which had gone ashore in the same gale, were considerably higher up on the beach than the brig Hope, and were afterwards gotten off, and refitted for sea. The schooner Ann, afterwards commanded by Captain Rooke, and which continued to sail out of this port until within the last six or eight months, was one of them; two sloops were also gotten off, which were a great way higher up than the brig. Deponent says that the said brig Hope, when he was on board of her, after the gale, was not bilged, and that her hold and flooring were dry; that he judged her to be an old vessel, and not worth much, but did not believe, from what he saw of her condition; that she had sustained any serious recent damage which ought to be attributed to the gale. Deponent says that he was afterwards present at the sale of the said brig, her tackle, rigging, apparel, &c., and made several purchases: among other things, he purchased a lot of sails and bread for five or six dollars. The sails that he bought, as well as the others that were sold as having belonged to the said brig, were extremely indifferent, and, indeed, were fit for nothing but to make paper. He also purchased two harness tubs and the pork in them, and he recollects perfectly well having put the contents of both tubs into one, and they did not fill that. He bought also small parcels, including, as he believes, the greater part of the rigging, which turned out to be very poor.

The lower fore rigging was not stripped off the brig, the deponent did not inquire why, but he was under the impression then, and is still, that it was not worth taking off. Deponent purchased the hull of said brig at the same time, and went down to her twice after the sale, and does not remember at any time to have seen her deserted by the tide. The lower fore rigging was still standing when she was delivered to this deponent.

Further deponent saith not.

EZRA SAMPSON.

The Deposition of John McPhail, taken at the same time and place, to be read in evidence in the same causes.

The said deponent being duly cautioned and sworn, did depose and say, that some short time after the gale of the fourth of June, eighteen hundred and twenty-five, he was present in Norfolk at the sale of the hull, materials, sails, rigging, &c. of the brig Hope, which vessel had gone ashore near Craney Island beach in that gale. He recollects perfectly well having been struck with the appearance and condition of the articles offered for sale. The sa*les* and rigging were of a miserable quality, and altogether unfit for a vessel bound on a sea voyage; and this deponent from his long experience in matters of this sort, was persuaded that they had not sustained any recent injuries, but that they had been worn and used until they were no longer sea-worthy. This deponent thinks that the sale took place somewhere about the middle of June, eighteen hundred and twenty-five; it was conducted by Hugh and William Pannell, as auctioneers. Deponent remembers very well, that Mr. John Allmand of this place, and Mr. James Sanderson of Alexandria, were present at the sale, and that he, this deponent, observed aloud at the time, in the hearing of many persons present, that he had attended many sales of a similar character, that is to say, of the materials, rigging, &c., of vessels which had been wrecked, but that he had never been present at one, where the vessel to which they belonged appeared to have been so wretchedly and insufficiently provided, judging as deponent did from the quality and condition of the articles sold as having belonged to the said brig Hope.

JOHN McPHAIL.

The Deposition of William Pannell, taken at the same time and place, to be read in the same causes.

The said deponent being duly cautioned and sworn, did depose and say, that in the month of June, eighteen hundred and twenty-five, he was one of the firm of Hugh and William Pannell, auctioneers of the borough of Norfolk; that on the eighteenth day of that month, he, as one of the said firm, conducted the sale of the hull, rigging, materials, &c., of the brig Hope, James Brown, master, said to have been driven ashore near Craney Island, in the gale of the fourth of that month, and that the paper annexed to this deposition, and iden-

tified by the signature of this deponent, is a true and correct copy of the account of the sales, as made by him at the time.

WILLIAM PANNELL.

VIRGINIA, *Borough of Norfolk, to wit:*

I, John E. Holt, mayor of the said borough, not being of counsel or attorney to either of the parties to the causes in which the foregoing depositions are intended to be read in evidence, and not being in any wise interested in the event thereof, do hereby certify, that the aforesaid John Allmand, Ezra Sampson, John McPhail, and William Pannell, were on this day at my office in the borough aforesaid, by me carefully examined, and cautioned, and sworn, to testify the whole truth in the causes aforesaid, and that the foregoing depositions of the said witnesses were reduced to writing by me, and subscribed by them respectively in my presence. I also certify, that the said depositions were taken at the instance of the defendants in the causes in the caption thereof mentioned, and that no notice was given of the taking of the same, because neither of the plaintiffs, nor any attorney of theirs, or either of them, were or was known to be within one hundred miles of the place of caption; and further, that the reason for taking the said depositions was, that the said deponents all live at a greater distance from the District of Columbia than one hundred miles, all of them being residents of this borough.

Given under my hand and the seal of my office, on this twen-
[L. S.] ty-eighth day of September, in the year of our Lord eighteen hundred and twenty-seven.

JOHN E. HOLT, *Mayor.*

Sales on account of the owners, underwriters, and others, concerned in the brig Hope, James Brown, master, stranded on the flats of Craney Island, in the gale of the 4th of June.

Hull, spars, &c.	Sampson		$86 00
Camboose	Roberts		5 70
Anchor	Butt		28 00
Bag beans	Ellis		75
Chest tools	Moore		2 00
Gin case, bbl. and plates	Ellis		1 62½
Bread, sail, and fish	Sampson		5 50
Matts, &c.	Jones		56¼
2 kegs white lead	Thorburn	2 62½	5 25
Lanthorn, &c.	Sampson		1 62½
2 compasses	Brundell	1 25	2 50
Lot kitchen furniture	Sampson		2 87½
½ barrel flour	Ellis		2 25
1 barrel beef	Thorburn		4 75
1 do shad	McPhail		1 75
2 harness tubs, &c.	Sampson		7 00
1 barrel tar	Martin		1 87½

2 bars, iron	Hodges		37½	
2 kegs and 4 casks	Sampson	1	18¾	
2 plains	Waite	1	00	
Shovel, iron, and can hooks	Sampson	5	25	
Stove and grind-stone	Martin	2	00	
Hand spikes, &c.	Curtis		18¾	
Lot of rope	Sampson	1	75	
Pump and hoop	Hodges		75	
Cable	Stribling	31	00	
Hauser	Martin	10	00	
Main rigging, block, &c.	Bradford	14	50	
Do back stays	Sampson	13	25	
Mats, &c.	Martin	1	31	
Mainsail	Sanderson	19	00	
Studding sail	do	2	25	
Lot of jugs, &c.	Martin	4	12½	
Foretop mast stay stail	Curtis	1	75	
Do do do	Allmand	2	00	
Lot of large blocks	Sanderson	3	50	
Do do	Martin	3	00	
Do small do	Sanderson	1	37½	
Putlock, plater, &c.	Curtis		75	
Blocks and rope	do	1	37½	
Lot of rigging	Sampson	2	62½	
Do do new	Stribling	7	50	
Lot of rigging	Sampson	3	00	
Do of do	do	2	37½	297 19¾
Do do	do	3	50	
Do do hauser	do	1	37½	
Do do	do	2	62½	
Do do	do	1	68¾	
Do do	do	1	00	
Do do	do	2	00	
Boom irons	Curtis		37½	
Damaged sail	Moore	1	62½	
Fore sail	Reeves	6	50	
Foretop gallant sail	Moore	1	50	
Lower studding sail	Sanderson	2	62½	
Jib	Moore	3	75	
Top gallant studding sail	do	1	25	
Main stay sail	do	5	50	
Foretop sail	Stribling	6	50	
Chain cable and anchor	do	13	25	
Boat, &c.	Sampson	11	00	66 06¼
				$363 56

Charges.

Advertising, 1 25; hand-hire, 1 62 -	2 87	
Borough tax, ½ per cent. - - -	1 81	
Commission, 2½ per cent. - - -	9 08	13 76
		$349 50

E. E.
Norfolk, June 18, 1825.

JOHN AND WILLIAM PANNELL,
Auctioneers.

[Copy.]

The foregoing is the copy referred to in my deposition.
WILLIAM PANNELL.

September 28, 1837.

VIRGINIA, *Borough of Norfolk, to wit:*

The deposition of James D. Thorburn, taken on the 29 of September, eighteen hundred and twenty-seven, at the mayor's office in the borough of Norfolk, to be read in evidence in two suits pending in the circuit court of the United States for the District of Columbia and county of Alexandria, in one of which, Turner Ashby and Magnus T. Stribling, are plaintiffs, and the Columbian Insurance Company of Alexandria, are defendants; and in the other of which, the same Turner Ashby and Magnus T. Stribling, trading under the firm of Ashby and Stribling, are plaintiffs, and the same Columbian Insurance Company, are defendants.

The said deponent being cautioned and sworn to testify the whole truth, did depose and say, that some time in the month of June, eighteen hundred and twenty-five, who was then, and still is a merchant of this borough, deponent was employed at the instance of Captain Brown, to attend to the business of the brig Hope, of which the said Brown had been master, and which vessel had gone ashore near Craney Island, in the gale of the fourth of that month. That the usual proceedings were had in relation to the said vessel, and that on the eighteenth of the said month of June, the hull, materials, &c., of the said vessel were sold at public auction in Norfolk, under the superintendence of Messrs. Hugh and William Pannell, auctioneers. The sale having been advertised for several days before it took place. One of the owners of the brig, to wit: Magnus T. Stribling, was present at the sale on the morning on which the sale took place; and as well as this deponent remembers, after one or two articles had been sold, this deponent received a letter purporting to be from James Sanderson, secretary of the Columbian Insurance Company of Alexandria, a copy of which is hereto annexed, (see this letter, page ,) which copy, this deponent not choosing to give up the original, is identified by the signature of this deponent. Immediately after receiving the said letter, the deponent ordered the sale to be stopped,

and gave the letter to Mr. Stribling to read; after some consultation, it was thought that the sale ought to proceed, and by the direction of Mr. Stribling, it was accordingly carried on.

And further the deponent knoweth not.

JAMES D. THORBURN.

VIRGINIA, *Borough of Norfolk.*

I, John E. Holt, mayor of the said borough, not being of counsel or attorney to either of the parties to the causes in which the foregoing deposition is intended to be read in evidence, and not being in any wise interested in the event thereof, do hereby certify, that the aforesaid John D. Thorburn was on this day at my office in the borough aforesaid, by me carefully examined, and cautioned, and sworn, to testify the whole truth in the causes aforesaid, and that the foregoing deposition of the said witness was reduced to writing by me, and subscribed by the said witness in my presence. I also certify, that the said deposition was taken at the instance of the defendants in the causes in the caption thereof mentioned; and that no notice was given of the taking of the same, because neither of the plaintiffs, nor any attorney of theirs, or either of them, were or was known to be within one hundred miles of the place of the caption, and further, that the reason for the taking of the said deposition was, that the said deponent lived a greater distance from the District of Columbia than one hundred miles, he being a resident of this borough.

Given under my hand and seal of office, on this 29th day of
[L. S.] September, 1827.

JOHN E. HOLT, *Mayor.*

And also, gave in evidence the advertisement of the sale of the hull and materials of the said schooner Hope, in these words:

"This day, the 18th instant, at 11 o'clock, in front of Mr. Hudson's warehouse, Town point, for the benefit of whom it may concern, will be sold, the sails, standing and running rigging, anchors, and cables, and other materials saved from the brig Hope of Alexandria, Brown, master, stranded on the breach of Elizabeth river in the late storm, and condemned by survey.

At the same time and place, the hull, masts and spars of said brig, as they lay on the shore, about two miles below Craney Island. The brig is 127, 39—95 tons burthen, and it is said is not bilged. By order of the captain and James D. Thorburn agent. Terms, Virginia money.

H. & W. PANNELL, Auctioneers.

And proved by James Sanderson, that when the insurance was effected on the said vessel, as charged in the said declaration, he was, and has ever since continued to be, the secretary of the said Columbian Insurance Company; and that he was, when said insurance was made, and ever since, been well known to Magnus T. Stribling, one of the plaintiffs as secretary as aforesaid; that when

the news of the said vessel having been driven on shore was received at the office of the said Company, he was sent down to Norfolk by the Board of Directors to take such measures as he might think advisable for their interest; that he arrived at Norfolk on the evening of the 16th day of June, 1825, and on the same evening called on the said Stribling, and offered to supply the money necessary to get the said vessel off; that on the morning of the 18th of the same month, as stated in his letter annexed to the deposition of James D. Thorburn, he renewed his offer of money to enable the plaintiffs to get the vessel off, and to put her in that situation, that the voyage might be pursued, reserving all right of defence to the Company, should they not be liable for any of the expences attending the business; the said Sanderson having at that received the offer of Mr. Rooke, to contract to get her off, as stated in the deposition of the said Rooke; that after having received this offer, and before either the said vessel or any of the rigging, or materials had been disposed of, he forbid the said James D. Thorburn and the said Stribling from proceeding with the said sale; but, that after some consultation together, they determined to proceed, and did accordingly make the sale as stated in the deposition of the said William Pannell.

Upon which evidence so as aforesaid given, the defendants prayed the opinion and then instruction to the jury, that it was competent for the jury to infer, and that they ought to infer from the said evidence, that the said Magnus T. Stribling on behalf of himself and the said Turner Ashby, had revoked the abandonment so as aforesaid made to the defendants. Which instruction the court refused to give. To which refusal the defendants except, and this their bill of exceptions is signed, sealed, and ordered to be enrolled this 24th April, 1825.

W. CRANCH, [SEAL.]
B. THRUSTON. [SEAL.]

DISTRICT OF COLUMBIA, *Alexandria County, sct.*

I, Edmund J. Lee, clerk of the United States circuit court of the District of Columbia, for the county of Alexandria, do hereby certify, that the foregoing is a true transcript of the record of the proceedings in a certain action on the case lately depending in the said court, in which Ashby and Stribling and Peter Hewitt, are plaintiffs, and the Columbian Insurance Company of Alexandria, defendants, with all things touching the same, as fully and wholly as they exist among the records of my office.

In witness whereof, I hereto subscribe my name, and affix the [L. S.] seal of the said court, this 23d day of August, 1838.

EDM. J. LEE, *C. C.*

DISTRICT OF COLUMBIA, *to wit:*

To Turner Ashby and Magnus T. Stribling, lately trading under the firm of Ashby and Stribling, and Peter Hewitt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, being the present seat of the National Government, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the United States circuit court of the District of Columbia for the county of Alexandria, wherein the Columbian Insurance Company of Alexandria, are plaintiffs, and Ashby and Stribling and Peter Hewitt, are defendants, to show cause, if any there be, why the judgment rendered against the said Columbian Insurance Company, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the United States, this 20th day of July, 1838.

W. CRANCH.

DISTRICT OF COLUMBIA, *Alexandria County, to wit:*

Edward Burchell appeared before me, a justice of the peace for the county aforesaid, and made oath that on or before the eleventh day of September, 1838, he delivered true copies of the within citation, one to Peter Hewitt, and the other to Thomson F. Mason, attorney for the plaintiffs Ashby and Stribling.

Given under my hand, this 24th day of September, 1838.

B. HOOE.

UNITED STATES OF AMERICA, *District of Columbia, to wit:*

The President of the United States of America, to the Judges of the United States Circuit Court of the District of Columbia, greeting:

Because in the record and proceedings, and also the rendering of the judgment of a plea which is in the said court for the county of Alexandria, before you or some of you, between Turner Ashby and Magnus T. Stribling, lately trading under the firm of Ashby and Stribling, and Peter Hewitt, plaintiffs, and the Columbian Insurance Company of Alexandria, defendants, in a plea of trespass on the case, manifest error hath happened, to the great damage of the said Columbian Insurance Company, as by their complaint appears; and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Wash-

ington, in the District of Columbia, being the present seat of the National Government, on the second Monday in January next, that, the record and proceedings aforesaid being seen and inspected, the said Supreme Court may cause further to be done therein, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the United States, this 20th day of July, eighteen hundred and thirty-eight.

EDM. J. LEE, *C. C.*

Know all men by these presents, that we, William H. Miller, President of the Columbian Insurance Company, and William C. Gardner, are held and firmly bound unto Magnus T. Stribling, surviving partner of Turner Ashby and Magnus T. Stribling, and Peter Hewitt, in the full and just sum of two hundred dollars. To the payment whereof well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 20th day of July, 1838.

The condition of the above obligation is such, that whereas Turner Ashby and Magnus T. Stribling, lately trading under the firm of Ashby and Stribling, and Peter Hewitt, late at an United States circuit court of the District of Columbia, for the county of Alexandria, by the judgment of the said court, on the ninth day of May, 1838, recovered against the Columbian Insurance Company of Alexandria, the sum of twelve hundred and forty-nine dollars and one cent, with interest from the 20th August, 1825, together with costs of suit, and the said Columbian Insurance Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court of the District of Columbia, for the county of Alexandria, to reverse the judgment in the aforesaid suit, and the honorable William Cranch, chief judge of the circuit court of the District of Columbia, having signed a citation on the above mentioned writ of error directed to the said Ashby and Stribling, and Peter Hewitt, admonishing them to be and appear before the Supreme Court of the United States, to be holden at Washington, being the present seat of the National Government, on the second Monday in January next. Now, if the said Columbian Insurance Company, the plaintiff in error, shall prosecute his writ to effect, and answer all damages and costs, if he shall fail to make his plea good, then the above obligation to be void, or else to remain in full force, power, and virtue.

Signed W. H. MILLER, *President*, [SEAL.]
WM. C. GARDNER. [SEAL.]

Sealed and delivered in the presence of

Approved, Signed W. CRANCH.

A copy: Test: EDM. J. LEE, *C. C.*